Our ref: L0990

14th April 2009

Dear

Thank you for your letter of 1st March 2009, which details the elements of your complaint against the FSA. This letter sets out my final decision on the complaints you have raised.

At this stage I think it would be worth explaining my role and powers. Under the Complaints Scheme (Complaints against the FSA-known as COAF) my role is as an independent reviewer of the FSA's handling of complaints. I have no power to enforce any decision or action upon the FSA. My power is limited to setting out my position on your complaint based on its merits and then if I deem it necessary I can make recommendations to the FSA. Such recommendations are not binding on the FSA and the FSA is at liberty not to accept them. Full details of Complaint Scheme can be found on the internet at the following website; http://fsahandbook.info/FSA/html/handbook/COAF

The Complaint

In your complaint to this office you have stated that the FSA has not "adequately protected policyholders when certain "zombie" funds (that is closed funds) have been bought out by companies such as (the Firm)". You have gone on to state that you feel it is "quite unreasonable" that policyholders can face "large reductions in maturity payouts" when management and shareholders "gained millions from the plunder of such schemes".

You started corresponding with the FSA with regard to your policy in 2007. In your letter of 19th May 2007 you stated to the FSA;

> "My case is built around the fact that I was not aware, at the time of taking out the policy, that the policy would not be wholly invested in equities through the "life of my policy".

It is of note that your complaint has changed somewhat since the time of this early correspondence. Your complaint now centres on the behaviour of the firm in relation to its policyholders with regard to the investment return received and how the FSA has dealt with your correspondence. Previously, as your letter of 19th May 2007 illustrates, it had been far more to do with the proportion of equities within the investment vehicle. It transpires that although you did not agree with the shift of equities in 2007 at the time, it appears that this decision may have transpired to be a good investment change considering the significant drop in equity values between 2007 and the current situation.

The FSA position

The early part of your correspondence with the FSA was through its consumer contact centre (CCC) department. This came to head with that team's letter to you dated 13th July 2007. In this letter the FSA informed you that this letter was its "final response" and that any further communication received on the subject would "not be acknowledged or substantively replied to". You then launched a complaint with the FSA complaints team. The FSA provided its decision to you in its letter dated 23rd December 2008, where it did not uphold your complaint. This letter set out a brief time line of events before addressing what the FSA felt to be the elements of your complaint, which I set out below;

1) You allege that the lack of up to date publications since November 2005 indicates that the FSA is not taking this issue seriously and is inadequate.
2) You allege that the statement "we will certainly use these examples to inform our regulatory thinking and future work on this subject with the firms we authorise" is wholly unsatisfactory.
3) You say that you found it insulting not to be able to express your views directly to Mr Strachan and that the final paragraph was dismissive.

The FSA has gone on to address these three heads of complaint and draw from those comments it has made in relation to these heads of complaint the overall conclusion that it has not upheld your complaint.

My Position

Having reviewed the entirety of the file on the matter that the FSA has provided me with it is clear to me that these three elements do not address your complaint satisfactorily. This is because it does not deal with the gravamen of your complaint, namely the FSA's regulation of the "zombie" fund of which you are a policyholder and it subsequently being purchased and the regulatory implications of that purchase. Nor does this decision review the full breadth of your complaint surrounding the issue of the policy you hold. I feel it only addresses these three relatively unimportant elements, none of which go properly to addressing the FSA position with regard to the losses you feel you have suffered due to the FSA inadequately protecting your position as a consumer as you allege.

It is of note that I have criticised the FSA on previous occasions for not addressing complainant's issues properly. I shall return to this issue later.

From all your correspondence it is clear that you feel that as a member of a "zombie" fund you feel that you have been disadvantaged by that fund being purchased by another firm. It is also clear that you feel that the purchase was made so that the new firm could use the fund in which you and fellow policyholders are invested as a vehicle for the new firm to maximise profits for the management and shareholders of that firm, to the detriment of the policyholders of that fund. You have argued that the projected shortfall on the target maturity value of your policy is evidence of the new firm prioritising managers and

shareholders before policyholders. You have also argued that increased share price, increased dividend and payments made to the management of the new firm as further evidence of the prioritising of management and shareholders ahead of policyholders. You have repeatedly indicated that these 'losses' to the policyholders and gains to the management and shareholders are in fact one tranche of money being taken directly from one and given to the other. You argue that the FSA has failed in its duties by letting this transfer of monies from one group to another to take place.

Unfortunately throughout the FSA correspondence with you I do not believe it explains the *non sequitur* in your argument. This tranche of money, as I have referred to it, is not actually one tranche of money. This is because of a number of factors;

1) Your policy is apparently a with-profits policy, which has bonuses paid to it. Some of these bonuses may be contractual but it is likely that the majority of bonuses are non-contractual. As a consequence of this, non payment of such non-contractual bonuses cannot be viewed as a 'loss' as you are not contractually entitled to receive it. Similarly until you are awarded such a bonus you have no rights or claim to those monies.
2) The 'shortfall' in your policy is based on a projected maturity value. This projection is not guaranteed and that should have been explained to you at the point of sale. If it was not then that is a matter which you should complain to the firm in the first instance, and if you remain dissatisfied, then to the Financial Ombudsman Service (FOS).
3) The increases in share value and dividend could easily be generated from other areas of the company and not necessarily the with profits fund. By grouping funds together in one firm, such as the firm that bought your fund, it is possible to drive down administration costs, drive down investment costs due to having more 'bargaining power', to reduce resource costs through more effective working practices, to make better use of resources and to reduce costs over a wide spectrum of other areas. Any or all of these could have led to the increased profitability of the firm that bought your fund.
4) It is quite possible that the profits made by the Firm were created in other areas of the company and may have had nothing to do with the fund that you are invested in.
5) You have not provided any evidence to demonstrate that it is the same tranche of money, only the allegation that as one area is in shortfall and another in surplus the management must be taking from one to fund the other.
6) Furthermore you have not provided any evidence of FSA wrongdoing in relation to this fund, other than the unsubstantiated allegation that the firm are mismanaging the monies and investments in its control and that by not stopping them then the FSA must also be at fault.

In conclusion you have not demonstrated any wrongdoing on the part of the firm nor the FSA. In fact as your complaint has evolved you have inadvertently accepted that you appreciate that the investment decisions taken by the firm in 2007 were possibly to your benefit. It is clear that if your exposure through the fund to equities before this change in

investment focus had remained to this day, your shortfall with regard to the projected maturity value would be somewhat higher than it is currently.

It is my view that this complaint was always better suited to being dealt with by the FOS. In your correspondence of April 2007 you state that you are in correspondence with the FOS. I can only assume that your complaint to the FOS was unsuccessful.

I turn now to the handling of your correspondence and complaint by the FSA. It is clear that correspondence between you and the CCC lasted sometime before it was brought to a succinct end with the FSA letter of 13th July 2007. Although I have some concern over this letter, I am also mindful that you had not complained as such but were making enquiries. Further I am mindful that with such correspondence between the FSA and consumers there is a need for finality on the FSA's part, or at least finality on the part of the CCC. I think that it would be fair to say that the FSA could have made more effort to establish the remedy you sought, and that you could have been clearer in the aims you were trying to achieve by writing to the FSA in the first place.

In relation to the decision letter by the FSA's complaint team dated 23rd December 2008 I do not feel it is a satisfactory response to the complaints you have made. The FSA letter of 19th September 2008 defined your complaint as;

"You claim that the Consumer Contact Centre's response to your concerns about the Firm was "inadequate, unsatisfactory, quite insulting and dismissive".

The letter also states that if you believed the assessment of the complaint to be incorrect to inform the FSA in writing by the 3rd October 2008. In your letter of 28th September 2008 you expound on each of the following words "inadequate, unsatisfactory, quite insulting and dismissive" and then go onto make a number of comments about other areas, including Northern Rock, an article in the Sunday Times, a significant paragraph about the basis of your complaint about the behaviour of Resolution, and a number of other matters. None of these, especially the basis of your complaint against Resolution, were addressed by the FSA in its correspondence between then and now. Nor were these issues addressed in its decision letter. Furthermore the single allegation put to you in the letter of 19th September 2008 is different to those three allegations answered in the decision letter of 23rd December 2008. I regret this inconsistent approach by the FSA.

In conclusion I cannot uphold the main element of your complaint, namely the FSA regulation of the Firm.

Yours sincerely

Sir Anthony Holland
Complaints Commissioner